



Massachusetts
Municipal
Association

One Winthrop Square, Boston, MA 02110
617-426-7272 • 800-882-1498 • fax 617-695-1314
www.mma.org

July 17, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, Third Report and Order - MB Docket No. 05-311

Dear Ms. Dortch,

On behalf of the 351 cities and towns of the Commonwealth of Massachusetts, the Massachusetts Municipal Association is writing to formally express our grave concerns and disagreement with the Federal Communications Commission's ("FCC") proposed Third Report and Order ("Order") requiring Local Franchising Authorities ("LFA") to treat cable-related, in-kind contributions as franchise fees subject to the statutory five percent franchise fee cap, and regarding the LFA's ability to use its cable franchising authority to regulate the mixed-use network of an incumbent cable operator that is not a common carrier.

In this Order, the FCC would allow cable operators to deduct the fair market value of the non-capital obligations associated with public, educational and governmental ("PEG") channels from the five percent franchise fee cap. This is a radical change, undermining decades of common interpretation and implementation of federal law. While this Order is considered to be prospective, meaning that cable operators cannot recoup past franchise fee payments, the FCC makes clear that the Order would apply to *existing* franchise agreements. This Order thus unduly interferes with long-term contracts freely and consensually negotiated between two parties.

These negotiated contracts are results of hours of work between cable operators and local officials acting on behalf of their residents. Like all freely negotiated contracts, various concessions are made to result in a document mutually agreeable and in the best interest of both parties. This Order puts regulatory weight on certain terms in an existing agreement, offsetting the entire negotiation process. Compounding the effect of opening up existing long-term contracts, disagreements about how to determine the fair market value of these invaluable services are inevitable, and will lead to further legal challenges and disputes.

The loss of revenue caused by the Order will force municipalities to either divert resources away from core municipal and school services to maintain existing PEG programming, suffer a dramatic reduction in the scope of PEG channels, or lose them altogether. None of these FCC-

driven options is in the public interest. On the other hand, private sector cable operators in Massachusetts are set up for an FCC-granted windfall. Because cable operators pass through the costs they incur by paying franchise fees, they recoup the costs from cable subscribers. This Order would also allow them to subtract the “fair market value” from the franchise fee, but does not require any change in what is charged to subscribers, essentially allowing cable operators to double recover.

Since the adoption of the Second Further Notice of Proposed Rulemaking in September of 2018, almost 2,000 Massachusetts individuals, community media centers, elected officials, local officials and non-profit organizations, representing different ethnic, religious, arts, cultural, economic development and educational stakeholders, have responded expressing their concerns with the proposed rulemaking. The sheer number of responders helps to demonstrate the important role PEG channels play in Massachusetts. Their input, statements and objections to the rulemaking demonstrate that the FCC’s actions in this regard would undermine the public interest and harm our communities and our local governments.

Adding insult to injury, this Order further preempts LFAs from regulating non-cable services and equipment of franchised cable operators, including the imposition of any fees on non-cable services. This regulation effectively impacts the exercise of municipal authority to regulate placement of facilities in their own rights-of-way. As stated in our Comments submitted on November 2, 2018, this Order combined with the FCC’s Declaratory Ruling and Third Report and Order creates a federally-set race to the bottom between telecommunications providers and cable companies providing non-cable services, further and further limiting what municipalities will be able to charge for the use of their public rights-of-way. The FCC’s position would effectively mandate an unjustified public subsidy of private commercial interests.

We fervently oppose this Third Report and Order and ask you to reconsider. We ask you to safeguard the public interest by maintaining the current franchise fee structure and honoring the authority of cities and towns to control their public rights-of-way.

If you have additional questions or need further information on this matter, please do not hesitate to have your office contact me or MMA Senior Legislative Analyst Brittney Franklin at 617-426-7272 at any time. The MMA is prepared to work closely with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Beckwith", written in a cursive style.

Geoffrey C. Beckwith
Executive Director & CEO